

### **REMARKS**

Presently, claims 1, 5-7, 9-10, 14, 18-20, 22-31, 33-43 and 45-67 are pending in the application. Claims 1, 31, 48 and 59 are independent claims, and each was amended in this response. No new matter was introduced as a result of the amendments. Entry of the amendments and favorable reconsideration are earnestly requested.

### **CLAIM REJECTIONS – 35 U.S.C. §112**

Claim 1 was rejected under 5 U.S.C. §112 as allegedly being indefinite for reciting the feature “detecting commercial establishment data in an acoustic commercial establishment signal transmitted within a commercial establishment in which the product is located, the commercial establishment data representing the commercial establishment.” Details regarding these features may be found, for example, in ¶¶0052-57 of the present specification. Applicant respectfully submits there is nothing indefinite regarding these features – a plain reading of the language reveals that data, contained (embedded) within a transmitted acoustic signal, is detected to indicate data representing a commercial establishment. The Office has provided no evidence of how these features would be insolubly ambiguous to one skilled in the art. Furthermore, it is not understood by Applicant how “shopping carts rolling, announcements being made, tones and bells, etc.” (*see* paragraph 2, page 2 of Office Action) are even remotely relate to the claimed features and how this provides commercial establishment data. As an example, assuming an acoustic announcement is made in a store, the announcement *is the acoustic signal itself*; there is no “data” that is “in” the acoustic signal. For at least these reasons, Applicant respectfully submits the rejection is improper and should be withdrawn.

### **CLAIM REJECTIONS – 35 U.S.C. §103**

Claims 1-3, 9-14, 18-20, 29-37, 40, 41, 45, 47, 48, 56-62, and 65 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US 2001/0028301), in view Swartz et al. (US 20030132298), and further in view of Shotey et al (US 20020004740);

Claims 6, 25, 38, 39, 43, 53, 55, and 67 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US 2001/0028301), in view Swartz et al. (US

20030132298), in view of Shotey et al. (US 20020004740), and further in view of Crystal et al. (US 2001/0028301);

Claims 5, 7, 15, 16, 28, 42, 49, and 64 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Geiger et al. (US 2001/0028301), in view Swartz et al. (US 20030132298), in view of Shotey et al. (US 20020004740), and further in view of Schuster et al. (US 2004/0027271);

Claims 22, 23, 50, and 51 are rejected under 35 U.S.C. §103(a) as being unpatentable over Geiger et al. (US 2001/0028301), in view Swartz et al. (US 20030132298), in view of Shotey et al. (US 20020004740), and further in view of Burgess (US 6,720,876);

Claims 24, 52, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. (US 2001/0028301), in view Swartz et al. (US 20030132298), in view of Shotey et al. (US 20020004740), and further in view of Hampton et al. (US 6,252,522);

Claims 26, 27, 46, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. (US 2001/0028301), in view Swartz et al. (US 20030132298), in view of Shotey et al. (US 20020004740), and further in view of Maggio (US 5,489,096); and

Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. (Geiger) (US 2001/0028301), in view Swartz et al. (Swartz) (US 20030132298), in view of Shotey et al. (Shotey) (US 20020004740), and further in view of Steinbrecher (US 2003/0061002). Applicant respectfully submits the rejections are improper and should be reversed.

Regarding independent claims 1 and 31, the prior art, alone or in combination, fails to teach or suggest the features of detecting product data in the portable monitor and “detecting commercial establishment data *in the portable monitor via an acoustic commercial establishment signal* transmitted within a commercial establishment in which the product is located, *the commercial establishment data being embedded in the acoustic commercial establishment signal* and representing information regarding the commercial establishment; storing first time data on a predetermined time base in association with the product data representing timing of proximity to the product; and *storing and associating the product data and commercial establishment data in the portable monitor*” as recited in claim 1 and similarly recited in claim 31.

As argued previously, Geiger is directed to a materially different configuration, where a device is attached to a shopping cart (¶¶0008, 0032) so that promotional material may be

forwarded (or pushed) to the device (§§0054). In contrast to the present claims, Geiger is not concerned with tracking the time of a user's proximity to a product (and hence determining product exposure), but merely forwards advertisements and other promotions to the shopping cart, which do not necessarily have anything to do with the proximal product (see, e.g., §§0058). More importantly, Gieger does not disclose detecting commercial establishment data in an acoustic commercial establishment signal transmitted within a commercial establishment in which the product is located, the commercial establishment data representing the commercial establishment. The Office Action argues that §§0058 and 0006 of Gieger disclose these features (page 3, last paragraph – page 4, first paragraph), but a cursory reading demonstrates that this is clearly incorrect. The sections merely disclose acoustic tones that are generated when promotional messages are activated – the Office doesn't bother to explain how this disclosure relates to the features of “detecting commercial establishment data in an acoustic commercial establishment signal.” If the acoustic tones are being interpreted as “an acoustic commercial establishment signal,” what data is being detected “in” the signal? Appellant argues that such a configuration does not exist in Gieger.

Swartz fails to solve the deficiencies of Geiger. Similar to Geiger, Swartz discloses a portable device that has promotional material “pushed” to it by a central computer (§§0068). Again, there is no disclosure relating to “detecting commercial establishment data in an acoustic commercial establishment signal transmitted within a commercial establishment in which the product is located, the commercial establishment data representing the commercial establishment.” Shotey fail to solve these deficiencies as well. For at least these reasons, Appellant submits the rejection to independent claims 1 and 31 are overcome and should be withdrawn. For the same reasons, claims 2-3, 9-14, 18-20, 29-37, 40, 41, 45, 47, which depend directly and indirectly from independent claims 1 and 31, are allowable as well.

Regarding independent claims 48 and 59, the prior art, alone or in combination, fails to teach or suggest the features of “storing commercial establishment data representing a commercial establishment, *said commercial establishment data being decoded from an acoustic signal*” and “processing the participant location data, the commercial establishment data and the product location data to produce product proximity data indicating exposure of the participant to the predetermined product in the commercial establishment” as recited in independent claims 48 and similarly recited in independent claim 59. None of the cited references disclose the

monitoring of participant location via the portable monitor using commercial establishment signals decoded from audio. For at least these reasons, Applicant respectfully submits the rejection to independent claims 48 and 59 is overcome and should be withdrawn. As claims 49-68 and 60-67 depend directly and/or indirectly from claims 48 and 59, they are allowable for the same reasons.

In light of the amendments and arguments provided above, Applicants respectfully submit the rejections are improper and should be withdrawn. Applicants respectfully submit that the patent application is in condition for allowance and request an early Notice of Allowance. The Commissioner is authorized to charge and credit Deposit Account No. 120913 for any additional fees associated with the submission of this Response. Please reference docket number 52579-113197 (P0125A).

Respectfully submitted,

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Dated: May 25, 2012